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Filing date: **04/11/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202898
Party	Plaintiff L'Oreal USA, Inc. and L'Oreal
Correspondence Address	ROBERT L SHERMAN PAUL HASTINGS LLP 75 EAST 55TH STREET NEW YORK, NY 10022 UNITED STATES rls@paulhastings.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Robert L. Sherman
Filer's e-mail	rls@paulhastings.com
Signature	/Robert L. Sherman/
Date	04/11/2013
Attachments	Opposer's Notice of Reliance - Part 1 of 3.pdf (3 pages)(144846 bytes) Exhibit A.pdf (3 pages)(164756 bytes) Exhibit B-1.pdf (2 pages)(77601 bytes) Exhibit B-2.pdf (3 pages)(101036 bytes) Exhibit B-3.pdf (4 pages)(136591 bytes) Exhibit B-4.pdf (2 pages)(69125 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 85/270,272
Published in the Official Gazette on August 2, 2011
Mark: FOREAL FORÉAL BY MIKHAIL

L'ORÉAL S.A. and L'ORÉAL USA, INC.,

Opposer,

v.

MIKHAIL LEVITIN T/A MIKHAIL
LEVITIN INSTITUTE,

Applicant.

Opposition No. 91202898

ORAL ARGUMENT REQUESTED

OPPOSER'S NOTICE OF RELIANCE

(Part 1 of 3)

Pursuant to Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 704.02 and 37 CFR §§ 2.120 and 2.122, L'Oréal S.A. and L'Oréal USA Creative, Inc. (collectively, "L'Oréal" or "Opposer") hereby offers into evidence and intends to rely on the following:

1. Pursuant to 37 C.F.R. § 2.123(b), the parties have stipulated that testimony may be received in the form of declarations. The parties' stipulation is attached hereto as **Opposer's Exhibit A.**

2. Applicant's responses and amended responses to Opposer's discovery requests, which are attached hereto as Opposer's Exhibit B.

- a. **Opposer's Exhibit B-1:** Applicant's "Answer to Opposer's First Set of Interrogatories," Answers to Interrogatory Request Nos. 1 and 2, dated December 11, 2012.
- b. **Opposer's Exhibit B-2:** Applicant's "Answer to Opposer's First Set of Requests for Admission," Answers to Request for Admission Nos. 24 and 31-33, dated December 11, 2012.
- c. **Opposer's Exhibit B-3:** Applicant's "Answer to Opposer's First Set of Requests for Admission" and Applicant's "Clarified Answer to Opposer's First Set of Requests for Admission," Answer to Request No. 43, dated February 27, 2013.
- d. **Opposer's Exhibit B-4:** Applicant's "Clarified Answer to Opposer's First Set of Requests for Admission," Answer to Request No. 46, dated February 27, 2013.

ORAL ARGUMENT REQUESTED

Dated: April 11, 2013

Respectfully submitted,

PAUL HASTINGS LLP

By: 

Robert L. Sherman

Natalie G. Furman

75 E. 55th Street


New York, New York 10022

212-318-6000

Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of OPPOSER'S NOTICE OF RELIANCE (Part 1 of 3) has been served upon Dr. Mikhail Levitin, P.O. Box 102, Reeders, Pennsylvania 18352, by electronic transmission, as mutually agreed upon by the parties, and by depositing a true copy of the same with the U.S. Postal Service, first-class mail, postage prepaid, on April 11, 2013.



Edith R. Lopez

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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EXHIBIT A TO OPPOSER'S NOTICE OF RELIANCE

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Mikhail Levitin T/A MIKHAIL
LEVITIN INSTITUTE,

Applicant.

Opposition No. 91202898

STIPULATION TO SUBMIT TESTIMONY BY AFFIDAVIT OR DECLARATION

Pursuant to Trademark Rule 2.123(b), 37 C.F.R. § 2.123(b), and Trademark Trial and Appeal Board Manual of Procedure § 703.01(b), L'Oréal S.A. and L'Oréal USA, Inc. (collectively, "L'Oréal" or "Opposer") and Mikhail Levitin T/A MIKHAIL LEVITIN INSTITUTE ("Applicant") hereby stipulate and agree that the testimony of any witness may be submitted in the form of an affidavit or declaration by such witness during the appropriate testimony period. Nothing herein shall prevent a party from objecting to testimony on the grounds of competency, relevance, admissibility, materiality and/or any other grounds that would be available to it if testimony by oral deposition took place.

Dated: February 4, 2013

MIKHAIL LEVITIN

By: 

Mikhail Levitin

P.O. Box 102
Reeders, PA 18352-0102
570-872-7962

Applicant

PAUL HASTINGS LLP

By: 

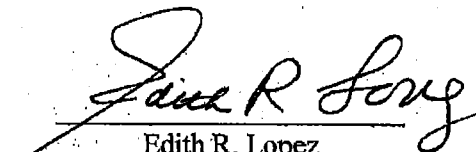
Robert L. Sherman

75 E. 55th Street
New York, New York 10022
212-318-6000

Attorney for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Stipulation to Submit Testimony by Affidavit or Declaration has been served upon Mikhail Levitin by electronic transmission, as mutually agreed upon by the parties, and by depositing a true copy of the same with the U.S. Postal Service, first-class mail, postage prepaid on March 7, 2013.


Edith R. Lopez

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EXHIBIT B-1 TO OPPOSER'S NOTICE OF RELIANCE

INTERROGATORIES

1. State the date of and describe the reasons for the selection of Applicant's Mark, including the consideration of any other marks and/or any other goods or services, and identify the person(s) with the most knowledge of the selection of Applicant's Mark and goods.

In 1969 my friend gave me L'Oréal's Age Perfect Day Cream and ask me for my opinion.

My grandmother tried my cream and compared it with L'Oréal's Age Perfect Day and stated that

L'Oréal's Age Perfect Day is "dreck" and my is real, so I called it Foreal by Mikhail, it was my most knowledgeable selection of the Mark.

2. State the date and describe the circumstances under which Applicant first became aware of Opposer, of Opposer's L'OREAL Mark and of Opposer's Marks, and identify the person most knowledgeable of the foregoing.

Answered in #1.



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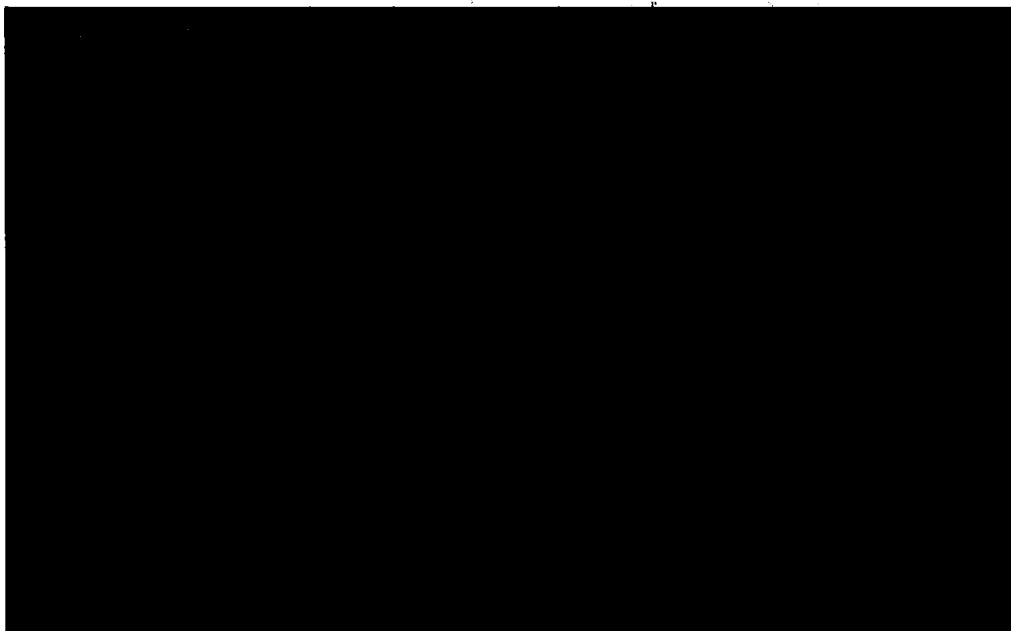
ORAL ARGUMENT REQUESTED

EXHIBIT B-2 TO OPPOSER'S NOTICE OF RELIANCE



24. The L'Oreal trade name, Opposer's L'OREAL Mark, and Opposer's Marks are and for a long time have been widely marketed and promoted to a broad class of consumers through television advertisements, print media, and on the Internet.

Admitted. Upon available at this time information and believe the statement is admitted,





31. Applicant was aware of Opposer prior to applying for Applicant's Mark.

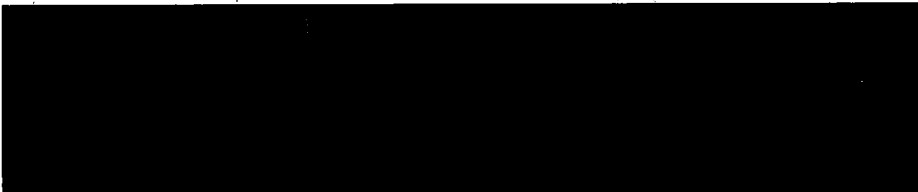
Admitted.

32. Applicant was aware of Opposer's L'OREAL Mark prior to applying for registration of Applicant's Mark.

Admitted.

33. Applicant was aware of Opposer's Marks prior to applying for registration of Applicant's Mark.

Admitted.



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EXHIBIT B-3 TO OPPOSER'S NOTICE OF RELIANCE

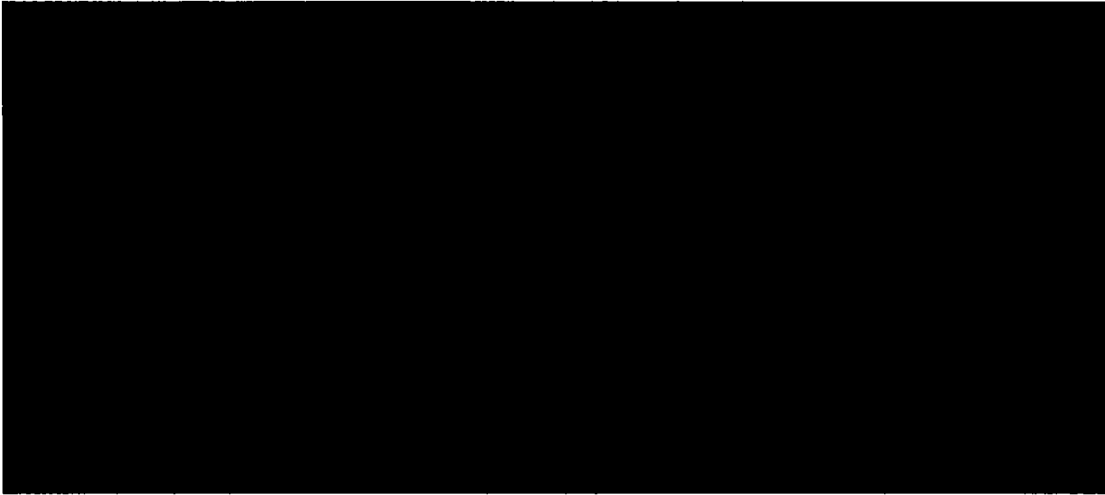


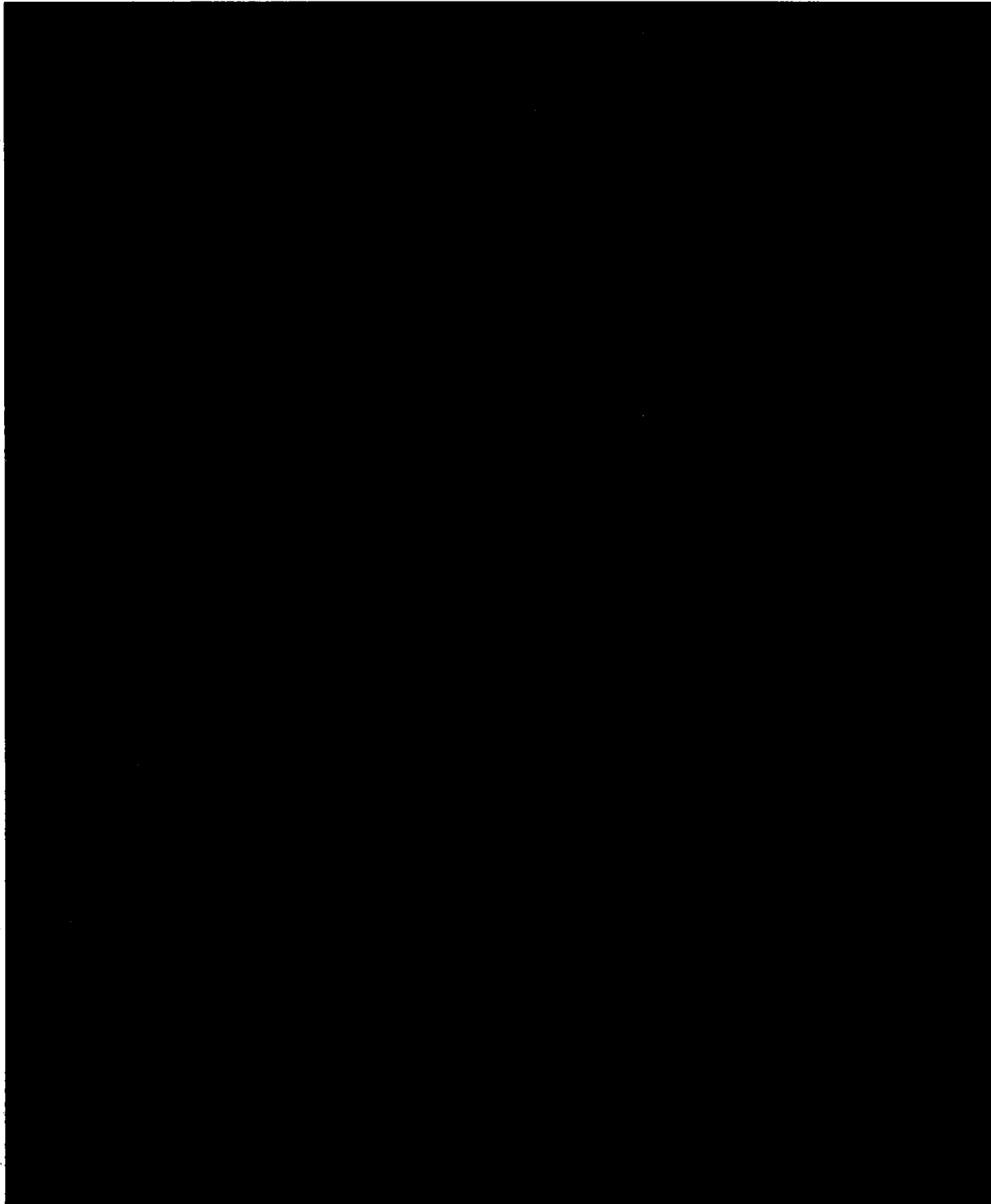
43. Prior to applying for Applicant's Mark, Applicant was aware that Opposer sells personal care products, including but not limited to skin creams, anti-aging creams, and cosmetics.

Admitted in part and denied in part.

Admitted that Applicant was aware that Opposer sells personal care products, including but not limited to skin creams.

Denied about "anti-aging" creams as it requires a proper definition before the discussion.





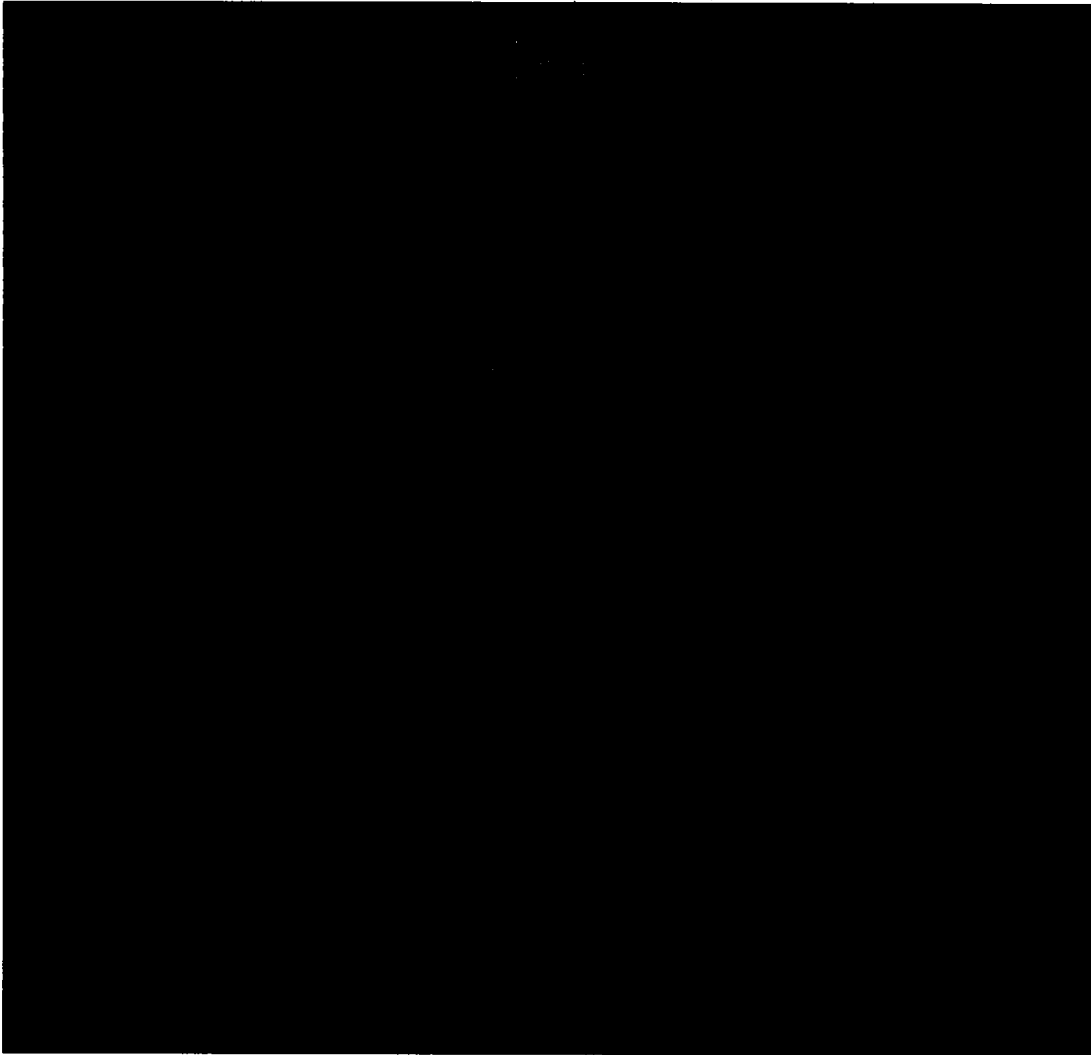
43. Prior to applying for Applicant's Mark, Applicant was aware that Opposer sells personal

care products, including but not limited to skin creams, anti-aging creams, and cosmetics.

Agree in part and deny in part.

Agree that Applicant was aware that Opposer sells personal care products, including but not limited to skin creams.

Denied. Disagree about a correlation between alleged name "anti-aging" creams and it's functional ability.



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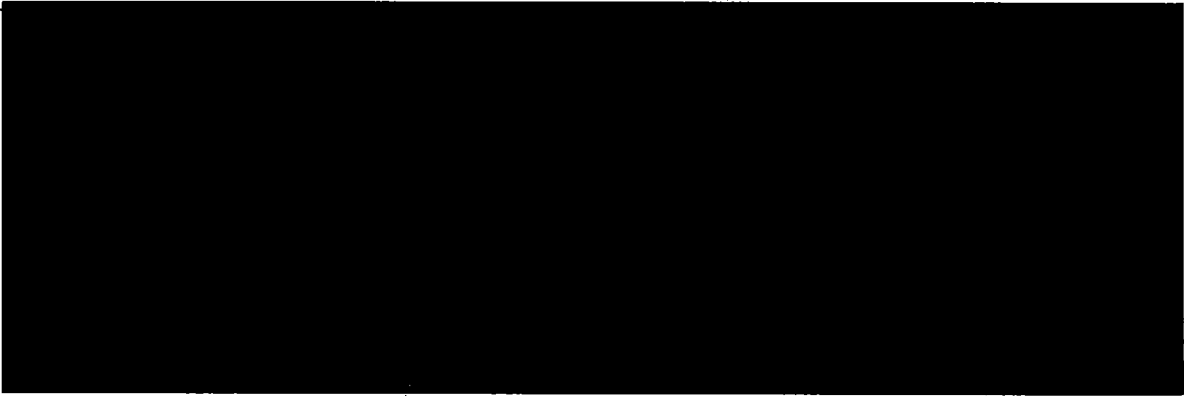
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EXHIBIT B-4 TO OPPOSER'S NOTICE OF RELIANCE



46. Applicant is not aware of any mark other than Opposer's that utilizes L'OREAL.

Agreed. Applicant is not aware of any mark other than Opposer's that utilizes L'OREAL.

